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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY EUGENE JORDAN,

Defendant and Appellant.

B258909

(Los Angeles County  
Super. Ct. No. LA022530)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, and  
Cheryl Lutz, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Larry Eugene Jordan appeals from an order  
denying his petition to recall his sentence under the Three Strikes Reform Act of

2012, added by Proposition 36. (Pen. Code, § 1170.126.)<sup>1</sup> After review of the record, Jordan’s court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*). Jordan filed a supplemental brief.

In 1995, Jordan was charged with six counts, including count 1 for assault with a deadly weapon, to which count he pled guilty. Specifically, count 1 alleged that he committed the crime of “ASSAULT GREAT BODILY INJURY AND WITH DEADLY WEAPON, in violation of PENAL CODE SECTION 245(a)(1)” in that he “did willfully and unlawfully commit an assault upon JAMES WILLIAMS with a deadly weapon, to wit, a knife, and by means of force likely to produce great bodily injury.” Jordan also admitted that he had suffered two prior strikes within the meaning of sections 667, subdivisions (b)-(i), and had one prior serious felony conviction within the meaning of section 667, subdivision (a)(1). As a result of his previous strike offenses (armed robbery and assault with a deadly weapon), he was sentenced to 25 years to life in prison, with an additional five-year enhancement based on his previous conviction for a serious felony.<sup>2</sup>

Jordan, who was not represented by counsel, filed a petition for recall of his sentence in 2014. The trial court appointed a public defender to represent Jordan in connection with his petition for recall and resentencing.

The trial court denied the petition for recall of sentence on the ground that Jordan’s current conviction for assault with a deadly weapon (§ 245, subd. (a)(1)) constitutes a serious felony pursuant to section 1192.7, subdivision (c)(23),

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> We hereby grant Jordan’s motion to augment the record on appeal to include the information, March 25, 1996 minute order, and the abstract of judgment from the superior court file.

rendering him ineligible for resentencing pursuant to section 1170.126, subdivision (e)(2). Jordan timely appealed.<sup>3</sup>

Relief under section 1170.126 is available only to inmates, who as a result of third-strike sentencing, are serving indeterminate life sentences for felonies “that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.” (§ 1170.126, subds. (b), (e)(1); see *People v. Johnson* (Cal. S. Ct. July 2, 2015) 2015 WL 4031246.) Jordan contends that he is eligible for resentencing because he was convicted under section 245 of assault by means of force likely to produce great bodily injury (which offense is not deemed a “serious felony”), as opposed to assault with a deadly weapon (which is a serious felony). (See *People v. Delgado* (2008) 43 Cal.4th 1059, 1065.) However, his contention is not supported by the record, which demonstrates that he pled guilty to “commit[ting] an assault upon JAMES WILLIAMS with a deadly weapon, to wit, a knife, and by means of force likely to produce great bodily injury.” As the trial court correctly concluded, Jordan is not eligible for resentencing under 1170.126, subdivision (e)(1) because his current indeterminate life sentence is based on his conviction of assault with a deadly weapon -- a knife -- which is a “serious felony” under section 1192.7, subdivision (c)(23).

We have examined the entire record and are satisfied that no arguable issues exist, and that Jordan has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

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<sup>3</sup> The trial court’s denial of a section 1170.126 motion for recall of sentence is an appealable order under section 1237, subdivision (b), whether or not the prisoner satisfies the threshold eligibility requirements to make such a motion. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598-601.)

**DISPOSITION**

The judgment is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.